

Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of	)	File No. EB-05-DL-181
	)	
Love's Travel Stops and Country Stores, Inc.	)	NAL/Acct. No. 200632500001
	)	
Oklahoma City, Oklahoma	)	FRN # 0010520286

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: February 09, 2006

By the District Director, Dallas Office, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* ("NAL"), we find Love's Travel Stops and Country Stores, Inc. ("Loves") apparently liable for a forfeiture in the amount of twenty-five thousand dollars (\$25,000) for willful and repeated violations of Section 302(b) of the Communications Act of 1934, as amended ("Act"),¹ and Section 2.803(a)(1) of the Commission's Rules ("Rules").² Specifically, we find Loves apparently liable for offering for sale radio frequency devices without the required Commission equipment authorization.

II. BACKGROUND

2. Section 302 of the Act authorizes the Commission to make reasonable regulations, consistent with the public interest, governing the interference potential of equipment that emits radio frequency energy,³ and prohibits, *inter alia*, the offering for sale of radio frequency devices to the extent such activity does not comply with those regulations. The purpose of this section is to ensure that radio transmitters and other electronic devices meet certain standards to control interference before they reach the market.

3. The Commission carries out its responsibilities under Section 302 in two ways. First, the Commission establishes technical regulations for transmitters and other equipment to minimize their potential for causing interference to radio services. Second, the Commission administers an equipment authorization program to ensure that equipment reaching the market complies with the technical requirements.⁴ The equipment authorization program requires that equipment be tested either by the manufacturer or at a private test laboratory to ensure that it complies with the technical requirements. For a large number of devices, including Citizens Band ("CB") radio transmitting equipment,⁵ equipment may not be marketed within the United States unless it has been tested and found to comply with Commission

¹ 47 U.S.C. § 302a(b).

² 47 C.F.R. § 2.803(a)(1).

³ 47 U.S.C. § 302a.

⁴ 47 C.F.R. Part 2, Subpart J.

⁵ CB radio operation is confined to forty specified channels from 26.965 MHz to 27.405 MHz (carrier frequency).

technical requirements, granted Commission Certification, and properly labeled.⁶ “Marketing” includes the sale or lease, offer for sale or lease (including advertising for sale or lease), importing, shipping, and/or distribution for the purpose of selling or leasing or offering for sale or lease.⁷

4. Unlike CB radio transmitting equipment, radio transmitting equipment that transmits solely on Amateur Radio Service (“ARS”) frequencies is not subject to equipment authorization requirements prior to manufacture or marketing. However, some radio transmitters that transmit in a portion of the 10-meter band of the ARS (28.000 to 29.700 MHz) are equipped with rotary, toggle, or pushbutton switches mounted externally on the unit, which allow operation in the CB bands after completion of minor and trivial internal modifications to the equipment. To address these radios, the Commission adopted changes to the CB type acceptance requirements by defining a “CB Transmitter” as “a transmitter that operates or is intended to operate at a station authorized in the CB.”⁸

5. Despite these changes to the definition of a CB transmitter, Commission enforcement agents continued to encounter non-certified CB transmitters marketed as ARS transmitters. On May 13, 1996, the Commission’s Office of Engineering and Technology (“OET”) released a Public Notice “to clarify the Commission’s Rules regarding equipment that is intended to operate in various radio services in the high frequency radio spectrum, including ‘10-Meter’ Amateur Radio Service (ARS) equipment.”⁹ The *Notice* stated that transmitters intended for operation on non-amateur frequencies must be approved prior to manufacture, importation or marketing. The *Notice* specifically included ARS transceivers designed “such that they can easily be modified by the users to extend the operating frequency range into the frequency bands” of the CB and other non-amateur radio services among those devices subject to equipment authorization procedures. The *Notice* also stated that the Commission considers these transceivers as intended to be operated on frequencies where the use of type accepted equipment is required “because of the simplicity of modifying them to extend their operating frequency range.”¹⁰ The Commission’s Office of General Counsel (“OGC”) later released a letter on the importation and marketing of ARS transmitters, which clarified that such transmitters that “have a built-in capability to operate on CB frequencies and can easily be altered to activate that capability, such as by moving or removing a jumper plug or cutting a single wire” fall within the definition of “CB transmitter” under Section 95.603(c) of the Rules and therefore require certification prior to marketing or importation.¹¹

6. On October 15, 2001, and November 13, 2002, Enforcement Bureau field agents visited two Loves retail outlets in Weatherford and Anna, Texas. At these locations, the stores displayed and offered for sale various models of non-certified CB transceivers marketed as ARS transmitters, including Galaxy models DX33HML and DX99V. OET specifically tested Galaxy models DX33HML and DX99V in 2000 and found both models to be non-certified CB transceivers. As a result of these inspections, the Dallas Office of the Enforcement Bureau (“Dallas Office”) issued two Citations directly to Loves’ corporate headquarters in Oklahoma City, Oklahoma on November 26, 2001 and November 15, 2002. The 2001 Citation specifically cited Loves for offering for sale non-certified CB transmitters, Galaxy models DX33HML and DX99V, while the 2002 Citation cited the Galaxy model DX99V as the non-

⁶ See 47 C.F.R. § 2.927(a).

⁷ 47 C.F.R. § 2.803(a).

⁸ 47 C.F.R. § 95.603(c) [FCC 88-256], amended changing “type acceptance” to “certification” [FCC 98-58].

⁹ *Extended Coverage High Frequency Transceivers*, Public Notice 62882, 1996 WL 242469, available at <<http://www.fcc.gov/Bureaus/Engineering_Technology/Public_Notices/1996/pnet6023.txt>> (OET, rel. May 13, 1996) (“*Notice*”).

¹⁰ *Id.*

¹¹ Letter from Christopher Wright, General Counsel, FCC to John Atwood, Chief Intellectual Property Rights, US Customs Service, 14 FCC Rcd 7797 (OGC, 1999).

Certified CB transmitter offered for sale by Loves. These Citations advised Loves of observed violations of the Commission's equipment authorization and marketing rules, specifically, marketing non-certified CB transceivers in violation of Section 302(b) of the Act and Section 2.803(a)(1) of the Rules. The Citations warned Loves that future violations may subject Loves to substantial civil monetary forfeitures for each such violation or each day of a continuing violation,¹² seizure of equipment through *in rem* forfeiture action, and criminal sanctions including fines and imprisonment.¹³

7. In response to the 2001 and 2002 Citations, Loves' Director of Risk Management at Loves' corporate headquarters in Oklahoma City, Oklahoma stated that the specific locations listed in the Citations would stop selling the named devices.¹⁴ In addition to the response from Loves' corporate headquarters, the Dallas Office received a letter on December 4, 2002 from Loves' attorney, which stated "[w]e dispute all of the legal and factual contentions set forth in the citation and ask you to treat this letter as a formal response to the citation."¹⁵

8. On February 2, 2004 and January 28, 2005, the Commission received complaints that Loves was marketing non-certified CB transceivers. From March 2004 through January 2005, Enforcement Bureau field agents visited 10 Loves retail outlets at the following locations: Norman, Oklahoma; Oklahoma City, Oklahoma; Calumet, Oklahoma; Ranger, Texas; Buckeye, Arizona; Casa Grande, Arizona; Gila Bend, Arizona; Quartzsite, Arizona; and Coachella, California. At these locations, the stores displayed and offered for sale various models of non-certified CB transceivers marketed as ARS transmitters, including Galaxy models DX33HML and DX99V. OET specifically tested Galaxy models DX33HML and DX99V in 2000 and 2004 and found both models to be non-certified CB transceivers during all tests.

9. On January 12, 2005, based on inspections conducted on January 5, 2005, the Los Angeles Office of the Enforcement Bureau ("Los Angeles Office") issued five Citations directly to Loves' retail outlets in Buckeye, Arizona; Gila Bend, Arizona; Quartzsite, Arizona; Coachella, California; and Casa Grande, Arizona. All five of the 2005 Citations specifically cited Loves for offering for sale non-certified CB transmitters, Galaxy models DX33HML and DX99V. Each of these Citations advised Loves of observed violations of the Commission's equipment authorization and marketing rules, specifically, marketing non-certified CB transceivers in violation of Section 302(b) of the Act and Section 2.803(a)(1) of the Rules. The Citations warned Loves that future violations may subject Loves to substantial civil monetary forfeitures for each such violation or each day of a continuing violation,¹⁶ seizure of equipment through *in rem* forfeiture action, and criminal sanctions including fines and imprisonment.¹⁷

10. On February 3, 2005, the Los Angeles Office received a response to the five 2005 Citations from Love's Director of Risk Management dated January 26, 2005, which stated "immediately upon my receipt of your letter, we immediately discontinued the sale of this merchandise at each of the

¹² See 47 C.F.R. § 1.80(b)(3).

¹³ See 47 U.S.C. §§ 501, 503(b), 510.

¹⁴ See Letter from Carl Martincich, Director of Risk Management for Loves to Agent Brock, Federal Communications Commission Dallas Field Office (November 27, 2002).

¹⁵ See Letter from Michael C. Olson, counsel for Loves, to James Wells, District Director, Federal Communications Commission Dallas Field Office (December 2, 2002).

¹⁶ See 47 C.F.R. § 1.80(b)(3).

¹⁷ See 47 U.S.C. §§ 501, 503(b), 510.

respective locations.”¹⁸ Additionally, the Los Angeles Office received a response from Loves’ attorney also dated January 26, 2005, stating “. . . all the radios in question are marketed as Amateur radios, a fact conceded in the citation. As sold, the radios operate only on the Amateur bands. As such, the radios are governed by Part 97 of 47 C.F.R., not Part 95. Part 97 does not require type acceptance of Amateur radios.”¹⁹ On February 28, 2005, the Los Angeles Office responded to Loves’ attorney informing him that his assertions were incorrect and that selling non-certified Amateur radios that can be easily modified to operate on CB frequencies violates the Rules.²⁰

11. On February 23 and 25, 2005, Enforcement Bureau field agents made two visits to Loves retail stores in Oklahoma where Loves offered for sale non-certified CB transceivers, Galaxy models DX33HML and DX99V.²¹ As noted above, OET had already tested these specific models and determined them all to be dual use Amateur Radio and CB transmitters. Each of the models could be modified to allow transmit capabilities on CB frequencies.

III. DISCUSSION

12. Section 302(b) of the Act provides that no person shall manufacture, import, sell, offer for sale, or ship devices or home electronic equipment and systems, or use devices, which fail to comply with regulations promulgated pursuant to this section. Section 2.803(a)(1) of the Rules provides that:

(a) Except as provided elsewhere in this section, no person shall sell or lease, or offer for sale or lease (including advertising for sale or lease), or import, ship, or distribute for the purpose of selling or leasing or offering for sale or lease, any radio frequency device unless: (1) [i]n the case of a device subject to certification, such device has been authorized by the Commission in accordance with the rules in this chapter and is properly identified and labeled as required by § 2.925 and other relevant sections in this chapter[.]

13. Section 95.603(c) of the Rules requires that “[e]ach CB transmitter (a transmitter that operates or is intended to operate at a station authorized in the CB) must be certificated.” Section 95.655(a) of the Rules states that “[n]o transmitter will be certificated for use in the CB service if it is equipped with a frequency capability not [authorized for CB in Part 95 of the Rules].” This section also states that “[CB t]ransmitters with frequency capability for the Amateur Radio Services . . . will not be certificated.” Additionally, Section 95.655(c) of the Rules prohibits any internal or external add-on device that functions to extend the transmitting frequency capability of a CB transmitter beyond its original capability.

14. From March 2004 to January 2005, Commission agents observed Loves offer for sale at ten different retail outlets various models of non-certified CB transmitters, including Galaxy models DX33HML and DX99V, which had all been tested and determined by OET to be non-certified CB transmitters. Although they were labeled as “amateur radios,” the specified models of Galaxy transmitters are CB transmitters, because each was designed to be easily modified by the end user to allow operation on CB frequencies. Commission Field Offices issued a total of seven Citations to Loves’

¹⁸ See Letter from Carl Martincich, Director of Risk Management for Loves to Catherine Deaton, District Director, Federal Communications Commission Los Angeles Field Office (January 26, 2005).

¹⁹ See Letter from Michael C. Olson, counsel for Loves, to Catherine Deaton, District Director, Federal Communications Commission Los Angeles Field Office (January 26, 2005).

²⁰ See Letter from Catherine Deaton, District Director, Federal Communications Commission Los Angeles Field Office to Michael Olson, counsel for Loves (February 28, 2005).

²¹ See ATTACHMENT for a listing of the Loves stores visited and the models observed.

corporate headquarters and its retail outlets warning Loves that future violations would subject Loves to penalties including civil monetary forfeitures. On February 23 and 25, 2005, Loves offered for sale at two of its retail outlets non-certified CB transmitters, Galaxy models DX33HML and DX99V.

15. Based on the evidence before us, we find that in three instances²² -- two on February 23, 2005, and one on February 25, 2005 -- Loves offered for sale non-certified CB transmitters in apparent willful²³ and repeated²⁴ violation of Section 302(b) of the Act and Section 2.803(a)(1) of the Rules.²⁵

16. Section 503(b) of the Act,²⁶ authorizes the Commission to assess a forfeiture for each willful or repeated violation of the Act or of any rule, regulation, or order issued by the Commission under the Act. In exercising such authority, we are to take into account “the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”²⁷

17. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* (“*Forfeiture Policy Statement*”)²⁸ and Section 1.80 of the Rules,²⁹ the base forfeiture amount for marketing unauthorized equipment is \$7,000 per violation. Thus, the total base forfeiture amount for all of Loves’ violations is \$21,000.

18. We are concerned, however, with the pattern of apparent violations here. Our equipment authorization rules ensure that radio transmitters and other electronic equipment comply with Commission technical requirements. The proliferation of non-certified CB transmitters may result in interference to certified CB transmitters and other devices, thereby undermining the effectiveness of our technical rules. Furthermore, we have previously stated that ARS equipment that can be easily modified to extend the operating frequency range into CB frequency bands are CB transmitters subject to equipment authorization procedures.³⁰

19. We are particularly troubled that Loves continued to violate these rules despite receiving numerous warnings from the Commission. The Commission warned Loves by issuing Citations directly to Loves’ corporate headquarters in 2001 and 2002, and the Commission issued five additional Citations

²² Although Loves offered for sale non-certified CB transmitters on days prior to February 23, 2005, the Commission is barred from enforcing those violations by the statute of limitations contained in Section 503(b)(6) of the Act.

²³ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

²⁴ The term “repeated,” when used with reference to the commission or omission of any act, “means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” 47 U.S.C. § 312(f)(2).

²⁵ See *Hightech CB Shop*, Forfeiture Order, 20 FCC Rcd 12514 (Enf. Bur. 2005), Memorandum, Opinion and Order, DA 05-3125 (rel. Dec. 2, 2005).

²⁶ 47 U.S.C. § 503(b).

²⁷ 47 U.S.C. § 503(b)(2)(D).

²⁸ 12 FCC Rcd 17087 (1997), *recon. denied* 15 FCC Rcd 303 (1999).

²⁹ 47 C.F.R. § 1.80.

³⁰ See 47 C.F.R. § 95.603(c). See also Letter from Christopher Wright, General Counsel, FCC to John Atwood, Chief Intellectual Property Rights, US Customs Service, 14 FCC Rcd 7797 (1999).

to Loves' retail outlets in 2005 after Loves continued to market non-certified CB transmitters at ten of its retail outlets. These Citations put Loves on actual notice that marketing of this equipment is unlawful and that continued violations could make Loves liable for severe sanctions. Yet, subsequent to these seven Citations, Loves marketed the very same models of unlawful equipment at least three times which involved at least two of its retail outlets. Loves' continuing violations of the equipment authorization requirements evince a pattern of intentional non-compliance with and apparent disregard for these rules. Accordingly, we believe an upward adjustment of the base forfeiture amount is warranted.³¹ Applying the *Forfeiture Policy Statement* and statutory factors (e.g., nature, extent and gravity of the violation and the history of prior offenses)³² to the instant case, we conclude that it is appropriate to adjust upward the base forfeiture amount of \$21,000 and propose a forfeiture of \$25,000 for Loves' apparent violations. Therefore, we find Loves apparently liable for a forfeiture in the amount of \$25,000.

IV. ORDERING CLAUSES

20. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, 0.314 and 1.80 of the Commission's Rules, Love's Travel Stops and Country Store, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty-five thousand dollars (\$25,000) for willfully and repeatedly violating Section 302(b) of the Act, and Section 2.803(a)(1) of the Rules.

21. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this *NAL*, Love's Travel Stops and Country Stores, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

22. Payment of the forfeiture may be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the *NAL*/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Associate Managing Director, Financial Operations, 445 12th Street, S.W., Room 1A625, Washington, D.C. 20554.³³

23. The response if any must be mailed to Federal Communications Commission, Enforcement Bureau, South Central Region, Dallas Office, 9330 LBJ Fwy, Suite 1170, Dallas, Texas 75243 and must include the *NAL*/Acct. No. referenced in the caption.

24. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

³¹ See, e.g., *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21866 (2002) (base forfeiture amount tripled); *American Tower Corporation*, 16 FCC Rcd 1282 (2001) (base forfeiture amount doubled).

³² See also 47 C.F.R. § 1.80, Note to paragraph (b)(4): Section II. Adjustment Criteria for Section 503 Forfeitures.

³³ See 47 C.F.R. § 1.1914.

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25. **IT IS FURTHER ORDERED** that a copy of this *NAL* shall be sent by regular First Class Mail and by Certified Mail Return Receipt Requested to: Love's Travel Stops and Country Stores, Inc., P.O. Box 26210, Oklahoma City, Oklahoma 73126.

FEDERAL COMMUNICATIONS COMMISSION

James D. Wells
District Director
Dallas Office
South Central Region
Enforcement Bureau

ATTACHMENT

1. February 23, 2005, Loves center #213, Tomkawa, Oklahoma. Non-certified CB transceiver Galaxy models DX33HML displayed and offered for sale.
2. February 23, 2005, Loves center #213, Tomkawa, Oklahoma. Non-certified CB transceiver Galaxy models DX99V displayed and offered for sale.
3. February 25, 2005, Loves center #202, Pauls Valley, Oklahoma. Non-certified CB transceiver Galaxy models DX33HML displayed and offered for sale.